Remarks

Entry of the above-noted amendments, reconsideration of the application, and allowance of all claims pending are respectfully requested. These amendments to the claims constitute a bona fide attempt by applicants to advance prosecution of the application and obtain allowance of certain claims, and are in no way meant to acquiesce to the substance of the rejections. Support for the amendments can be found throughout the specification (e.g., page 9, lines 3-8 and 16-20). Claims 2-7, 9, 10, 13, 14, 16 and 17 are pending.

Claim Rejections - 35 U.S.C. §103

MPEP §706.02(j) states: "To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)."
MPEP §2143.01 states: "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved, as a whole would have suggested to those of ordinary skill in the art. In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992)."

All claims except 7 and 14 were rejected under 35 U.S.C. 103 as being obvious based on LaFollette in view of Case and Eastep; claims 7 and 14 were rejected under 35 U.S.C. 103 as being obvious based on these references with the addition of Borella. Applicant respectfully

submits that the applied references, with or without modification or combination, assuming, *arguendo*, that the modification or combination of the applied references is proper, does not teach or suggest one or more elements of the claimed invention, as further discussed below. Applicant respectfully traverses the rejections and seeks withdrawal of the rejections resulting in allowance of the application.

In accordance with claim 2 the invention is directed to a system for measuring network round-trip time and comprises a client computer adapted for communications with a server computer. The client computer includes a processor and memory containing definitions identifying fast response operations initiated by an application program running on the processor. A monitor and analysis engine includes an analyzer for detecting the presence of at least one of the fast response operations. The fast response operations are certain operations associated with normal running of the application program requiring the transmission of a first packet to the server computer and receipt of a second packet from the server computer in response to the first packet. The monitor and analysis engine calculates the round-trip time when a fast response operation is detected based on the time interval beginning with the transmission of the first packet and ending with the receipt of the second packet.

In an exemplary embodiment discussed on page 9 of the specification, an SQL database application was discussed as the application software running on the processor of the client computer. Exemplary fast response operations associated with this database application were indicated to include OPEN_CURSOR and CLOSE_CURSOR operations. That is, these operations require a first packet to be transmitted from the client computer to the server computer, and a second packet responding to the first packet to be transmitted from the server computer to the client computer to complete the function, and the nature of the request is such that the server computer can process and cause the second packet to be generated in substantially less time than associated with round trip transit delays. Upon receipt of the first packet, the server computer substantially instantaneously (as compared to the total round-trip time) causes a second packet to be generated and sent to the client computer.

It should be especially noted that the fast response operations are associated with <u>the normal</u> <u>running of an application program, and that definitions stored in memory identify the fast</u> <u>response operations</u>. None of the references applied in rejecting claim 2, considered individually or in combination, provide such a teaching.

LaFollette is directed to determining a gap count for a serial bus network. A round-trip delay time for transmitting a packet from a first leaf node to a second leaf node and back over a communication path is determined. It is disclosed that the gap count module and pinging module implement the main functionality for the measuring node; see column 4, lines 31-33. Thus, LaFollette teaches away from the present invention as defined in claim 2 since it specifically teaches the use of a ping module and suggests that a specific measurement request (a ping) is required to implement the time calculation. LaFollette does not teach or suggest the use of fast response operations associated with the normal line of an application program.

Case is directed to a technique for measuring round-trip latency to computing devices requiring no client-side proxy presence. This reference is antithetical to the requirements of the present invention in accordance with claim 2 in that it specifically teaches a computing environment for enabling collection of round-trip network latency measurements without requiring additional software on the client. This should be contrasted to the present invention in which measurements are made by the client computer. Thus, one of ordinary skill the art would not be led to consider this reference since it teaches measurements are not to be made at the client side. This reference involves a redirection from a first to a second URL as initiated from the server side. Therefore, Case does not supply the missing teachings.

Eastep is directed to a call back architecture in a hybrid network with support for Internet telephony. A round-trip ping method is suggested for determining delays associated with candidate gateways. Traditional ping techniques are suggested. Thus, Eastep also teaches away from the present invention as defined by claim 2 in that it suggests the use of a conventional ping as compared to utilizing fast response operations associated with the normal running of an application program on the client computer.
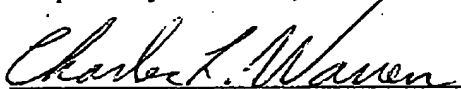
None of the references applied in rejecting claim 2 supply, either individually or collectively, the required teachings and elements of claim 2. Therefore, withdrawal of the 35 U.S.C. 103 rejection of claim 2 is believed to the proper.

Claim 6 further defines the invention of claim 2 by adding an additional requirement of a packet duplicator for intercepting and duplicating the first and second packets, and forwarding the duplicated packets to the monitoring and analysis engine for analysis. This limitation, when considered in combination with the elements of the parent claim, provide further patentable distinctiveness and is not believed to be suggested by the applied art.

Independent claims 9 and 16 are believed to be allowable for similar reasons discussed above with regard to claim 2.

In view of the above amendments and remarks, allowance of all claims pending is respectfully requested. If a telephone conference would be of assistance in advancing the prosecution of this application, the Examiner is invited to call applicants' attorney.

Respectfully submitted,

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